

**REMARKS/ARGUMENTS**

Claims 1, 4-6, 8-11, 14 and 16-27 are pending in the above application. By the above amendment, claim 27 has been added.

The Office Action dated April 14, 2009, has been received and carefully reviewed. In that Office Action, claims 1, 4-6, 8-11, 14 and 16-26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Mewhinney in view of Dezonno and further in view of "the instant application." This rejection is addressed below, and reconsideration and allowance of the pending claims is respectfully requested in view of the above amendments and the following remarks.

**AMENDMENTS AND GENERAL REMARKS**

It is believed that claims 1 and 11 are allowable over the art of record without amendment. However, the examiner does not seem to be addressing the claimed link between estimating the end of a call and determining a proportion of time the customer speaks relative to the time the agent speaks. It is believed that the present claims define such a link. However, to emphasize that the determined proportion of time is used to estimate the time remaining on a call, claims 1 and 11 have been amended to explicitly recite that the proportion of time is used to estimate the time remaining on a call. New dependent claim 27 adds a similar limitation to independent claim 19.

Applicant appreciates that the additional comments provided in the new rejections address some of the issues previously raised by Applicant. However, other arguments have not been addressed as required by MPEP 707.07(f). For example, the record still provides no explanation as to how Mewhinney or Dezonno suggest using the proportion

of time an agent speaks relative to the time a customer speaks in order to estimate the time remaining on a call. The record also fails to explain how Mewhinney is to be modified based on Dezonno, and does not provide a legal basis for the "fair reading" basis of obviousness relied upon by the examiner. No response at all has been provided in response to Applicant's arguments regarding claims 23-26. These claims were previously rejected as being obvious over Mewhinney in view of Dezonno and further in view of the instant application, in other words, the identical ground of rejection raised against these claims in the present Office Action. Therefore Applicant's arguments regarding these claims cannot be "moot in view of the new ground of rejection" as stated in the Office Action because the previous rejection was repeated. Moreover, the examiner's note to form paragraph 7.38 of MPEP 707.07(f) provides that the examiner must still respond to arguments that remain relevant even when a new ground of rejection is raised.

Applicant respectfully requests that the examiner address all the above issues as well as the issues raised in the previous reply that remain relevant to the present claims. Applicant maintains all previous arguments and reserves the right to address these issues again on appeal, if necessary. However, in an effort to advance the prosecution of this application, the below arguments focus primarily on a single issue that may be dispositive of the present case. It is therefore respectfully requested that if all claims are not allowed, the examiner respond to these arguments and show how the specific limitation of claim 1 discussed below is satisfied by the references of record so that the record will be clear on appeal.

REJECTIONS BASED ON MEWHINNEY, DEZONNO AND "INSTANT APPLICATION"

Claim 1 recites a call management system for interconnecting a customer who is using a communication device with one of a plurality of customer agents. The system includes, inter alia, means for segmenting the call into a plurality of phases, means for predicting a current phase of the call from the plurality of phases, and means for estimating time remaining on the call. The means for estimating the time remaining on the call include means for ... evaluating the proportion of time the customer speaks relative to time the agent speaks and using the proportion of time the customer speaks relative to the time the agent speaks to estimate the time remaining on said call.

The Office Action acknowledges that Mewhinney does not disclose at least evaluating the proportion of time the customer speaks relative to the time the agent speaks. Dezonno discloses measuring the time that a customer talks and the time an agent talks for purposes of determining whether an agent is "excessively talkative (column 1, lines 55-57)." For purposes of argument only, for this reply only, it will be assumed that one of ordinary skill in the art would have had a reason to modify Mewhinney in some manner based on the teachings of Dezonno. However, as discussed below, such a modification in no manner suggests the invention of claim 1, and claim 1 is submitted to be allowable over the art of record for at least this reason.

If Mewhinney and Dezonno are combined, the combination would suggest at most providing Mewhinney with information on the how much time an agent speaks and how much time the customer speaks. Mewhinney would still function as described in that reference, but the system, or an operator thereof, would have two additional pieces of information: the amount time that the agent speaks and the amount of time the

customer speaks. Nothing in either reference provides any suggestion that this additional information could be used to estimate the amount of time remaining in a call. It is further noted that Dezonno does not suggest that the proportion of time a customer speaks relative to the time an agent speaks be determined. The Office Action states that information "could easily be obtained," but nothing in the record provides any reason for obtaining this information. The fact that a reference can be modified does not by itself indicate that the modification is obvious. MPEP 2143.01. Nothing in the background section of the present application suggests any further modification to Mewhinney and Dezonno.

The Office Action does not explain why one skilled in the art would want to determine the proportion of time the agent speaks relative to the time the customer speaks or use this information for any reason. The Office Action also does not explain how either the time the customer speaks or the time the agent speaks as determined by Dezonno could be used to help estimate the time remaining in a call, much less how this information could provide a "better" estimate of the end time of a call as stated in the Office Action. The combination of Mewhinney, Dezonno and the background section of the instant application does not show the invention of claim 1, and claim 1 is submitted to be allowable for at least this reason.

If the rejection of claim 1 is not withdrawn, it is respectfully requested that the examiner explain for the record why one skilled in the art and aware of the teachings of Mewhinney and Dezonno 1) would determine a proportion from the times that an agent speaks and the time that a customer speaks in Dezonno and 2) would think that the amount of time an agent talks and the amount of time a customer talks would allow one

to obtain a "better" estimate of the time remaining on a call than can be provided by Mewhinney's unmodified system. The specification of the present application, which describes the present invention, provides a reason, but it is respectfully submitted that the Applicants' invention disclosure (e.g., "the instant application," as referred to by the Examiner) does not qualify as prior art and cannot be used to reject the Applicants' claims. There is no evidence or prior art in the record to give one skilled in the art a reason to modify Mewhinney as suggested in the Office Action.

Claims 4-6 and 8-10 depend from claim 1 and are submitted to be allowable for at least the same reasons as claim 1.

Arguments similar to those presented in connection with claim 1 apply to the rejection of claim 11, and claim 11 is submitted to be allowable for at least the same reasons as claim 1. Claims 14 and 16-19 depend from claim 11 and are submitted to be allowable for at least the same reasons as claim 11.

#### RESPONSE TO EXAMINER'S COMMENTS REGARDING SPEECH RECOGNITION

Page 3 of the Office Action includes comments on speech recognition that are apparently offered in support of the rejection of claim 19. Applicant does not accept these arguments and statements and responds to them herein to complete the record even though it is not clear how they are being used to support any particular claim rejection.

Applicant again acknowledges that speech recognition is well-known. However, this fact does not indicate that every possible application of speech recognition is obvious. Mewhinney indicates that one way a system can know that a call has entered

a new phase is based on the screen that is being displayed. Another way of informing the system is through a signal explicitly generated by an agent. Mewhinney does not indicate that a new phase is detected based on the presence of any particular word on a screen as suggested in the Office Action. Therefore, nothing in the record suggests determining a new phase by detecting a particular word with or without the use of speech recognition.

The Office Action also suggest that Mewhinney could be modified by allowing the agent to speak a certain phrase each time a call enters a new phase instead of using a keyboard. However, such a modification would significantly interfere with the operation of Mewhinney's system and would either change the principle of operation of Mewhinney or render Mewhinney's system unsatisfactory for its intended purpose. Mewhinney is a dialing system that may be used with an agent dialing prospective customers. The examiner seems to be proposing that while the agent is making a sale pitch, for example, he would periodically utter phrases such as "greeting phase" or "discussion phase." Thus, the agent might say: "I'm glad you like our product and I'd like to get your name and address closing phase," which would presumably be confusing to customers and interfere with sales. Modifications to a primary reference that change its principle of operation or render it unsatisfactory for its intended purpose are never obvious, (MPEP 2143.01), and it is therefore submitted that requiring an agent to verbally identify each phase of a sales call renders Mewhinney's system unsatisfactory for its intended purpose and that the modification is not obvious.

If the examiner maintains or presents a rejection based on the assertion that an agent should verbally identify the phase of a call instead of using, for example, a

keyboard, it is respectfully requested that the examiner provide a reason that one skilled in the art would consider making such a change.

### **CONCLUSION**

It is believed that claims 1, 4-6, 8-11, 14 and 16-27 are in condition for allowance in view of the above amendments and remarks. Wherefore, reconsideration and allowance of these claims is earnestly solicited. If the examiner believes that any additional changes would place the application in better condition for allowance, the examiner is invited to contact Scott Wakeman (Reg. No. 37,750) at the telephone number listed below.

### ***Deposit Account Authorization***

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 50-3828 and please credit any excess fees to such deposit account.

Respectfully submitted,

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